IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3694 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FICOM ORGANICS LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 3694 of 1999
MR BJ SHELAT, Senior Counsel for MR YF MEHTA
for Petitioner No. 1
MR MUKESH R SHAH for Respondent No. 1-4

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 17/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. During the hearing of this petition, it transpired that the reasons which are now attributed in the affidavit-in-reply did not appear in the impugned order dated 31.12.1998 at Annexure "H" to the petition by which, observing that the duty payable by the petitioner was not under dispute and that the declaration made by the petitioner was not covered under the Kar Vivad Samadhan Scheme, 1998, the petitioner's request to avail the benefit of the Scheme was rejected. Admittedly, no hearing was given before making the said order. From the record, it appears that an appeal was pending before the CEGAT against the order of the Commissioner requiring the petitioner to pay the duty. The declaration was made on 12.11.1998 within the period contemplated i.e. between 1.9.1998 and 31.12.1998. The Commissioner had made an order on 24.4.1998 and issued it on 27.4.1998 requiring the petitioner to pay the duty of Rs.51,65,303/- with interest. The impugned order dated 31.12.1998 does not mention that it was made because of any clarification given by the Central Government under Section 96(1) of the Kar Vivad Samadhan Scheme, 1998.

2. Under Section 72(1) of the Customs Act, it is provided that in the cases enumerated therein which relate to warehoused goods, the proper officer may demand, and the owner of the such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods. The impugned order is not passed on any ground germane to Section 72(1) and it does not refer to that provision at all.

3. Since the impugned order has been admittedly made without hearing the petitioner and does not give any reason, the learned counsel for the respondents states that the respondent-authority will, in view of the peculiar facts of the case, consider the matter afresh and take a decision in accordance with law after hearing the petitioner, notwithstanding the impugned order dated 31.12.1998. In view of this statement, the learned counsel for the petitioner states that, without prejudice to the rights and contentions of the petitioner that it may raise before the authority, the petitioner does not press for the petition, at this stage.

4. We, accordingly, direct that the respondent-Commissioner of Customs will consider the

declaration of the petitioner for availing the benefit of the Kar Vivad Samadhan Scheme afresh notwithstanding the order dated 31.12.1998, which is already made, and take a fresh decision in the matter in accordance with law, after hearing the petitioner, expeditiously and preferably within two months from the date of service of the writ of this order. Subject to these directions, the petition stands rejected as not pressed, at this stage. Rule is discharged with no order as to costs.

(R.K.ABICHANDANI, J.)

(KUNDAN SINGH, J.)

zgs/-